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World Bank New Delhi Seminar Series

Should the Right to Property Return?

Namita Wahi

(Harvard Law School and Center for Policy Research)

Friday, August 17

Second Floor Conference Room, World Bank New Delhi Office
(VC Connection to HT Building)

12:30 to 2:00 PM

Abstract: The Indian Constitution adopted in 1950 guaranteed to all citizens the fundamental right to “acquire, hold and dispose of property” subject to reasonable restrictions in the public interest. Moreover, Article 31 of the Constitution provided that any state acquisition of property must only be upon enactment of a valid law, for a public purpose and upon payment of compensation with exceptions for certain *zamindari* abolition laws. The following decades saw conflict between the legislature and the courts in cases of acquisition of property (movable and immovable) with the Supreme Court striking down acquisition laws (including but not limited to land acquisition laws) on constitutional grounds and Parliament responding with amendments to the Constitution which redefined property rights. This culminated in the 44th amendment in 1978 which abolished the fundamental right to property. However, a legal right to property was retained in Article 300A of the Constitution.

Prior to 1978, the Supreme Court was vilified in political rhetoric and scholarly discourse as being reactionary and anti poor. The Court’s enforcement of property rights was criticised for defending the rights of rich property owners and impeding the Parliament’s land reform agenda. Recently however, widespread state acquisition of land has received public attention due to dispossession of poor peasants and traditional communities like forest dwellers, cattle grazers, fishermen and indigenous tribal groups. Consequently, scholars have renewed focus on property rights. It is now argued that the “weakening of property rights” by Parliament in response to the Court’s pro-property rights decisions in the first phase has “dispossessed the poor” rather than the rich. In accordance with this view, in February 2009, a public interest petition was filed in the Supreme Court seeking invalidation of the 44th amendment and restoration of the fundamental right to property.

In my presentation, I will examine the chequered history of the constitutional property rights provision in order to provide a revised narrative of how state institutions in India, the Parliament

and the Supreme Court have, over the last sixty years, managed tensions between the right to property and the state's power to acquire property for the purposes of redistribution and economic development. I hope my presentation will contain useful insights for evaluating the current discourses surrounding the new Land Acquisition, Rehabilitation and Resettlement bill and the reinstatement of the fundamental right to property in the Constitution.

About the author: Namita Wahi is an S.J.D candidate at Harvard Law School and affiliated with the Centre for Policy Research, New Delhi. Her doctoral dissertation traces the historical evolution of the right to property in the Indian Constitution and examines how state institutions in India, the Parliament and the Supreme Court have, over the last sixty years, managed tensions between the right to property and the state's power to acquire property for the purposes of redistribution and economic development. Her representative publications include "India: Citizens, Courts and the Right to Health: Between Promise and Progress?" *Litigating Health Rights: Can Courts Bring More Justice to Health?* (Harvard University Press, 2011) (co-authored with Sharanjeet Parmar) and "Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and a Theory of Horizontal Accountability", 12 U.C. Davis J. Intl L. & Poly (2006).

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